

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GRACY VILLALOBOS, INDIVIDUALLY §
AND A/N/F EMMANUEL VILLALOBOS, §
A MINOR, and PAULA CANTU §
Plaintiffs §

V. §

CIVIL ACTION NO. _____
JURY

JOEY STAPLETON and §
S & J POTASHNICK TRANSPORTATION §
INC. D/B/A PTI POTASHNICK §
TRANSPORTATION, INC. §
Defendants §

**DEFENDANT, S & J POTASHNICK TRANSPORTATION, INC. D/B/A PTI
POTASHNICK TRANSPORTATION, INC.'S NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW, Defendant, S & J POTASHNICK TRANSPORTATION, INC. D/B/A PTI POTASHNICK TRANSPORTATION, INC., (incorrectly named as S & J Potasnick Transportation, Inc. d/b/a PTI Potasnick Transportation, Inc.) and files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removing this case to the United States District Court for the Southern District of Texas, Houston Division. The grounds for removal are as follows:

I. Background

1. Plaintiffs Gracy Villalobos, Individually and a/n/f Emmanuel Villalobos, a minor, and Paula Cantu, at the time this action was commenced, were, and still are, residents and citizens of Texas.

2. Defendant, Joey Stapleton ("Stapleton"), at the time this action was commenced, was, and still is, a resident and citizen of Tennessee.

3. Defendant, S & J Potashnick Transportation, Inc. d/b/a PTI Potashnick Transportation, Inc. ("PTI"), at the time this action was commenced, was, and still is, a Missouri corporation with its principal place of business in Missouri.

4. This lawsuit arises from a motor vehicle accident that Plaintiffs contend occurred on or about March 5, 2013. See, Plaintiff's Original Petition, P. 3, ¶ IV. Plaintiffs state that they were involved in an accident that occurred in Houston, Harris County, Texas. Plaintiffs allege that at the time in question, they allegedly suffered serious and disabling injuries when the automobile they were in was struck by a motor vehicle allegedly operated by Stapleton and owned by PTI.

5. Plaintiffs have sued for negligence and seek to recover damages for past and future physical pain, mental anguish, medical expenses, loss of earning capacity, physical disfigurement, impairment, property damage and loss of use. *Id.* At p. 5-6, ¶ VIII.

II. Grounds for Removal

A. Complete Diversity of Citizenship Exists Between the Parties and the Amount in Controversy Exceeds \$75,000

6. Plaintiffs are all citizens and residents of Texas. See, Plaintiff's Original Petition, P. 1, ¶ II. Stapleton is a citizen and resident of Tennessee.

7. In their Petition, Plaintiffs state that they are seeking monetary relief over \$200,000.00 but not more than \$1,000,000.00. See Plaintiff's Original Petition, pg. p. 6, ¶ VIII. Plaintiffs' damages therefore exceed the \$75,000.00 jurisdictional requirements for diversity jurisdiction. Accordingly, the amount in controversy requirement is satisfied. See, 28 U.S.C. § 1332(a).

B. Venue is Proper in this Division and in this District.

8. Plaintiffs filed this action in Harris County, Texas. The Houston Division of the

Southern District of Texas encompasses Harris County, Texas. Thus, this district and division embrace the place where the state court action is pending. *See*, 28 U.S.C. § 1441(a).

III. Procedural Requirements for Removal

9. This Notice of Removal is filed within thirty days of service on PTI. *See*, Exhibit “A.”

The Secretary of State mailed a copy of the Petition and Citation to PTI on April 29, 2013. Thus, this Notice of Removal is timely. *See* 28 U.S.C. § 1446(b). Furthermore, according to the Plaintiff’s Petition and citations, there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.00.

10. Pursuant to Southern District of Texas Local Rule 81 and 28 U.S.C. § 1446(a), the following documents are also attached to this Notice of Removal:

- a. Citations (Exhibit “A”);
- b. Copies of all pleadings asserting causes of action and all answers to such pleadings (Exhibit “B”);
- c. The state court docket sheet (Exhibit “C”);
- d. Index of Matters Being Filed (Exhibit “D”);
- e. A list of all counsel of record, including addresses, telephone numbers, and parties represented (Exhibit “E”);

11. A copy of this Notice of Removal will be filed with the Harris County District Clerk’s office promptly and will be served on Plaintiffs promptly. 28 U.S.C. § 1446(d).

12. The filing fee has been paid to the Clerk.

13. Stapleton consents to this Notice of Removal.

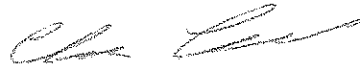
IV. Prayer

14. WHEREFORE, PREMISES CONSIDERED, Defendant, S & J POTASHNICK TRANSPORTATION, INC. D/B/A PTI POTASHNICK TRANSPORTATION, INC., prays that the above-styled action now pending in the 333rd Judicial District Court of Harris County, Texas be removed therefrom to this Honorable Court.

15. This Notice of Removal is filed subject to and without waiver of any defenses or objections to Plaintiffs' Original Petition as allowed by the Federal Rules of Civil Procedure or by any applicable law.

Respectfully submitted,

LEUNES LAW FIRM, P.C.




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ATTORNEYS FOR DEFENDANT
S & J POTASHNICK TRANSPORTATION, INC.
D/B/A PTI POTASHNICK TRANSPORTATION,
INC.

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the above and foregoing instrument was forwarded to all counsel of record by CM/ECF, fax, regular mail, certified mail, return receipt requested or hand-delivery in accordance with the Texas Rules of Civil Procedure on this 14th day of May, 2013.



Christopher Chay LeUnes